

APPEAL NO. 93060

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993) (1989 Act). An expedited contested case hearing was held in (city), Texas, on December 2, 1992 to determine whether the diagnosis and assessment of the designated doctor was correct. The hearing officer, (hearing officer), held that the diagnosis and assessment of the designated doctor was correct in the determination that there was no causal relationship between a tetanus shot the claimant received on December 6, 1991, and the subsequent problems with her left arm. The hearing officer accordingly concluded that the carrier was not liable to pay any medical or income benefits in accordance with her decision and the 1989 Act. The claimant, who is the appellant in this action, seeks our review of that decision.

DECISION

Because the claimant's request for review was not timely, we hold that the decision and order of the hearing officer has become final by operation of law.

The 1989 Act requires that a party that desires to appeal the decision of the hearing officer shall file a written appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the Commission's Division of Hearings. Article 8308-6.41(a). The decision of the hearing officer is final in the absence of a timely appeal by a party. Article 8308-6.34(h).

The record in this case shows that the hearing officer's decision was distributed to the claimant, her attorney, and the carrier on December 22, 1992. Rules of the Commission, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provide that for purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the Commission shall deem the received date to be five days after the date mailed. In addition, Rule 143.3(c) provides that a request for review of the decision of the hearing officer shall be presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and received by the Commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision. We observe that the record in the case below shows that the hearing officer, at the conclusion of the hearing, advised both parties of the statutory requirements for appeal of her order.

The claimant's request for review, which was dated and postmarked January 13, 1993, was stamped as received by the Commission on January 21. Claimant's request encloses a January 5th letter from her attorney which stated she would not be able to represent claimant further, but which advised the claimant she had the right to appeal the hearing officer's decision. Claimant states in her request for review, "I am sending this written request late because I just found out that I have to get things done by myself. As you will note in the enclosed copy [of the letter from claimant's attorney], it is dated January 5, 1993, but was received on January 7, 1993." The claimant also asks for an extension of

time for appeal.

Despite the fact that claimant may have received somewhat belated notice that her attorney would not represent her on appeal, that does not relieve her of the requirement to timely file her request. We note that, following receipt of her attorney's letter on January 7th, she had five more days to mail her request. This panel has further held that it cannot extend the time for requesting review as set by the 1989 Act. Texas Workers' Compensation Commission Appeal No. 91070, decided December 19, 1991. Applying the statute and rules to the circumstances in this case, we find that the claimant's request for review was untimely.

We accordingly hold that the decision and order of the hearing officer has become final by operation of law.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge